



EMPLOYMENT TRIBUNALS

Claimant

Mr P Reynolds

v

Respondent

IHSS Ltd

PRELIMINARY HEARING

Heard at: Watford

On: 7 November 2018

Before: Employment Judge Palmer

Appearances:

For the Claimant: Did not appear and was not represented

For the Respondents: Mr W Dobson, Counsel

JUDGMENT

1. The claimant's claims fail and are dismissed.

REASONS

1. The claimant's claim is for disability discrimination. The issues for this preliminary hearing are set out in the case management summary of Employment Judge Bloch on 29 May 2018 when the claimant was present. In short, the first issue is whether the judgment of 8 June 2016, dismissing the claim on withdrawal, should be varied or revoked and the current reinstatement confirmed. The second issue is whether the claim should be struck out as a fair trial is no longer possible.
2. I heard evidence from Tina Ahweh for the respondent and read the documents to which I was referred. The claimant was not present, nor was he represented and the tribunal was unable to contact him by telephone. The respondent had tried to contact the claimant by telephone and email prior to this hearing but had not received any response. The claimant has not complied with the tribunal orders,

although by the time the orders were sent out all the deadlines for compliance had expired.

The facts

3. I find the following facts.
4. The claimant's original claim was for disability discrimination. It arose out of matters that happened in 2014 and early 2015. The respondent argued that there were time limit issues. On 1 June 2016 the claimant wrote to the tribunal saying "I would like to inform you that I do not wish to continue with any tribunal proceedings towards my former employer, IHSS Ltd." No mention in the email was made of the reason for the withdrawal and in particular whether it was because of the fees or failure to get a fee remission or any other reason. I find that on balance the withdrawal was not related to payment of fees.
5. On 2 June 2016 the tribunal wrote to the parties confirming the withdrawal and stating that the hearing fixed for 3 June would not take place and the file would be destroyed in July 2017. On 8 June 2016 the tribunal sent the parties a judgment stating: "The proceedings are dismissed following a withdrawal of the claim by the claimant."
6. On 8 December 2017 HMCTS wrote to the claimant about reinstatement of employment tribunal claims following a rejection, dismissal or closure for failure to pay a fee or present a valid application for help with fees, (page 42). The claim was then reinstated but it is not clear if this was with judicial consideration or not. There was nothing to suggest that the claimant's withdrawal in June 2016 was due to his inability to pay the fee. He was also represented by Doyle Clayton solicitors on 2 June 2016 though it appears that even then the solicitors were having difficulty contacting the claimant (page 34). The solicitor with conduct of the matter has since left the firm so it is not easy to reconstruct what happened.
7. I find that it would be difficult to have a fair trial now for the reasons set out in Ms Ahweh's statement. Most of the relevant witnesses have now left the respondent's employ and one is abroad. The events about with the claimant complaints took place four years ago.

The law

8. Rule 51 ETs (Constitution & Rules of Procedure) Regs 2013 sch. 1 states:

"Where a claimant informs the tribunal, either in writing or in the course of a hearing, that a claim, or part of it, is withdrawn, the claim, or part, comes to an end subject to any application that the respondent may make for a costs preparation time or wasted costs order."
9. Rule 52 (dismissal following withdrawal) states:

"Where a claim or part of it has been withdrawn under Rule 51 the tribunal shall issue a judgment dismissing it (which means that the claimant may not commence a further claim against the respondent raising the same or substantially the same complaint) unless (a) the claimant has expressed at the time of withdrawal a wish to reserve the right to bring such a

further claim and the tribunal is satisfied that there would be legitimate reason for doing so, or
(b) the tribunal believes that to issue such a judgment would not be in the interests of justice.”

10. The rule is in mandatory form and simply requires a tribunal to dismiss the proceedings unless there is good reason not to do so. There is no duty to seek representations from the parties before dismissing the claim in such circumstances. *Campbell v OCS Group*.

Conclusion

11. I find that there was a withdrawal of the claim by the claimant on 1 June 2016 rather than the striking out of the claim because of non-payment of fees. The claimant has not provided any evidence to the contrary and did not attend the hearing. I also find that it would not be possible to have a fair trial now because of the difficulty of the respondent defending the claim so in the alternative I would strike out the claims under Rule 37(1)(e).

Employment Judge C Palmer

14 December 2018

Sent to the parties on:

...14 December 2018.....

For the Tribunal:

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